

REMARKS

The Specification has been amended to more clearly state a seed deposit of the hybrid E69T9*Inbred 442 seed and of the Inbred 442 seed. Claim 8 has been amended. Claims 10 and 33 have been amended to correct typographical errors. Claims 49-54 have been canceled. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §§102, 103 and 112 rejections set forth in the Office Action dated July 2, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to the specification at paragraph [0241] because it is not clear if the statements regarding the deposit apply to 442, E69T9*, or both. The Specification has been amended to more clearly state a seed deposit of the hybrid is in addition to the seed deposit of the inbred. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claim 8 under 35 U.S.C. §112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention. Applicant has amended claim 8 to obviate the Examiner's rejection. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 55-56 under 35 U.S.C. §112, first paragraph, as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Applicant acknowledges the requirement for a deposit of biological material. Upon allowance of the related claims in this application, a deposit of seeds of inbred line 442 will be made with the National Collections of Industrial Food and Marine Bacteria (NCIMB) and the Accession number will be added in place of the blank line.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by NCIMB. Accordingly, withdrawal of this rejection is respectfully requested.

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The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by NCIMB. Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 53-54 under 35 U.S.C. §112, first paragraph,

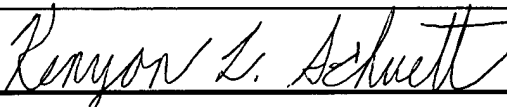
as failing to comply with the written description requirement. Applicant has canceled claims 53-54. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 8 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Applicant has amended claim 8 to obviate the Examiner's rejection. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 8 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103 as obvious over Riley et al. Applicant has amended claim 8 to obviate the Examiner's rejection. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 8 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-25 of issued patent 6,420,631. Applicant has amended claim 8 to obviate the Examiner's rejection. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102, 103, 112 and the judicially created doctrine of obviousness type double patenting. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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